IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

Crl.Rev.Pet.No. 3898 of 2007()

CRA.440/2006 of ADDL. SESSIONS COURT (ADHOC), KOZHIKODE
ST.1453/2005 of 2005 OF THE SPECIAL JFCM COURT (MARAD CASES) KOZHIKODE

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

A.ALI, AGED 56 YEARS, S/O AVARAN,
DOOR NO.39/1290, AVARAN'S HOUSE,
PUTHUSSERI PARAMBIL, NEAR FATHIMA ICE FACTORY,
PUTHIYANGADI, KOZHIKODE-21.

BY ADV. SMT.T.KAMALA MENON

RESPONDENTS: COMPLAINANT & STATE

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1. T.V.RAJESH,
S/O SUNDARAN, IIN FLOOR,
ALI BIN TALIB BUILDING, P.O.ARTS COLLEGE,
CALICUT-18.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3898 of 2007

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Dated : 31-10-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No. 1453 of 2005 on the file of the Special Judl. First Class Magistrate, Court, (Marad Cases), Kozhikode challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has

been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is sentenced to undergo imprisonment till rising of court and to pay a fine of Rs. 70,000/- (Rupees seventy thousand only) which shall be deposited before the trial court within five months from today failing which he shall suffer simple imprisonment for three months. The fine amount as and deposited shall be paid to the first respondent complainant as compensation under Sec. 357 (1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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